

**FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT**

MUR: 7114
DATE COMPLAINT FILED: July 28, 2016
DATE OF NOTIFICATION: July 29, 2016
RESPONSE RECEIVED: September 16, 2016
DATE ACTIVATED: February 2, 2017

EXPIRATION OF SOL: November 20, 2020
ELECTION CYCLE: 2016

COMPLAINANT: End Citizens United

RESPONDENTS: Casperson for Congress and Judi Skradski in
her official capacity as treasurer
Tom Casperson
Tom Casperson for State Senate

**RELEVANT STATUTES AND
REGULATIONS:** 52 U.S.C. § 30125(e)
11 C.F.R. § 104.3
11 C.F.R. § 110.3(d)
11 C.F.R. § 300.61-.63

INTERNAL REPORTS CHECKED: Disclosure Reports

AGENCIES CHECKED: Michigan Secretary of State

I. INTRODUCTION

The Complaint alleges that Tom Casperson for State Senate ("State Committee") paid for travel related to Casperson's congressional campaign using non-federal funds, in violation of the soft money prohibitions of the Federal Election Campaign Act of 1971, as amended ("the Act").

As discussed below, the available information indicates that after Casperson became a federal candidate, the State Committee transferred funds to his federal campaign committee, Casperson for Congress and Judi Skradski in her official capacity as treasurer ("Federal Committee"), by paying for travel expenses for his federal campaign. It also appears that the Federal Committee accepted and did not report the transfers of nonfederal funds from the State Committee.

Accordingly, we recommend the Commission find reason to believe that Casperson and Tom

Casperson for State Senate violated 52 U.S.C. § 30125(e) and that the Federal Committee violated 52 U.S.C. §§ 30125(e) and 30104(b). We also recommend that the Commission investigate the scope of the State Committee's payment of Casperson's federal campaign expenses, as well as the State Committee's receipts and disbursements after Casperson became a federal candidate.

II. FACTUAL BACKGROUND

Casperson was elected as a state senator for Michigan's 38th State Senate District in 2010 and won re-election to another four-year term in 2014.¹ Michigan limits its state senators to two terms in office.² Casperson announced his candidacy for Michigan's First Congressional District on November 9, 2015, and registered the Federal Committee on November 20, 2015.³

Casperson continued to serve as a state senator and maintained the State Committee while he was a federal candidate.⁴ He lost the primary for the congressional seat on August 2, 2016.⁵

The Complaint alleges that after Casperson declared his federal candidacy, he used non-federal funds from the State Committee to "finance his federal campaign's announcement tour."⁶ The Complaint argues that Casperson "raised over \$10,000 from state PACs" while he was a federal candidate, including contributions that do not comply with the source and amount

¹ Casperson has served as a state senator since 2010. *See* State Senator Tom Casperson, *Meet Tom*, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Mar. 30, 2017).

² Mich. Const. Art. IV, Sec. 54.

³ Compl. at 2 (July 28, 2016); Response at 1 (Sept. 16, 2016); *see* FEC Form 2, Tom Casperson (Nov. 20, 2015); FEC Form 1, Statement of Organization, Casperson for Congress (Mar. 16, 2011).

⁴ Resp. at 1.

⁵ *Jack Bergman victorious in 1st Congressional District Republican primary*, MICH. LIVE, http://www.mlive.com/news/index.ssf/2016/08/win_1st_congressional_district.html (Aug. 2, 2016).

⁶ Compl. at 4.

1 prohibitions of the Act, and he used those funds for his federal campaign travel.⁷ According to
2 the Michigan Secretary of State's records, the State Committee raised \$16,500 between the date
3 Casperson declared his federal candidacy and his congressional primary.⁸

4 As evidence of the general allegation that the State Committee paid for travel for
5 Casperson's federal campaign, the Complaint points to four overnight hotel stays that it suggests
6 should have been paid by the Federal Committee.⁹ The Complaint infers that because
7 Casperson's state senate district is located entirely on Michigan's Upper Peninsula, while
8 Michigan's First Congressional District comprises both Upper and Lower Peninsula
9 constituencies, any travel Casperson made to the Lower Peninsula must have been related to his
10 congressional campaign.¹⁰

11 To further support this allegation, the Complaint attaches pictures from Casperson's
12 Facebook page showing him at various congressional campaign events in the weeks after he
13 announced his candidacy.¹¹ One such post states that "[s]ince announcing his congressional bid
14 [the previous week], Tom and his campaign have ... travel[ed] over 1,400 miles, [a]ppeared on
15 15 different radio programs and 8 different TV programs, and [h]osted 2 tele-town halls attended
16 by more than 5,000 northern Michigan Residents."¹²

⁷ Compl. at 2, 4 fn.20.

⁸ Casperson for State Senate, *Campaign Finance Disclosures*, MICH. SEC'Y STATE, <https://cfrsearch.nictusa.com/documents/416411/details/filing/contributions?schedule=%2A&changes=0>. The \$10,000 cited in the Complaint refers to the State Committee's receipts from PACs in November and December 2015. The State Committee received additional contributions from PACs in 2016.

⁹ Compl. at 2-3.

¹⁰ Compl. at Exs. A-B.

¹¹ *Id.* at Ex. E-G.

¹² *Id.* at Ex. G.

1 Respondents deny the allegations.¹³ While they admit that the State Committee paid for
2 the trips detailed in the Complaint, they contend that each was related to Casperson's official
3 duties as a state senator. In support, Respondents provide the invoices for each stay, which show
4 that all four trips occurred before Casperson became a federal candidate, and they explain how
5 each trip was related to Casperson's official state senate duties.¹⁴ For instance, the purported
6 overnight stay on November 9, 2015, allegedly related to Casperson's candidacy announcement,
7 actually occurred on October 26, 2015, and was related to his attendance at an auction held at a
8 Catholic school.¹⁵ Respondents do not address the allegation that the State Committee raised
9 \$10,000 in non-federal funds from state PACs after Casperson became a federal candidate.

10 III. LEGAL ANALYSIS

11 Among other things, the Act's soft money provisions prohibit federal candidates, their
12 agents, and entities established, financed, maintained, or controlled ("EFMC'd") by federal
13 candidates from soliciting, receiving, directing, transferring, or spending funds in connection
14 with any federal or non-federal election unless the funds are in amounts and from sources
15 permitted by the Act.¹⁶ A federal candidate who concurrently runs for state or local office,
16 however, may solicit, receive, and spend funds outside of the Act's amount and source
17 limitations if the solicitations, receipts, and disbursements are solely in connection with the

¹³ The Federal Committee and Casperson filed a joint response. The State Committee did not respond.

¹⁴ Resp. at 5-9. Respondents explain that the dates used in the Complaint were the dates of the credit card statements, not the dates that Casperson actually incurred the travel expenses.

¹⁵ *Id.* at 3. Respondents contend that the stay alleged to have occurred on November 12, 2015, actually occurred on November 2, 2015, and was "in connection with a State Senate hearing; the Mackinaw City stay occurred on November 5, 2015, and was related to official meetings and the Michigan Chamber Alliance legislative reception; and the Breakers Resort stay occurred on October 29, 2015, "in order for Casperson to attend the Sault Chamber legislative lunch" the next day. *Id.*

¹⁶ 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62. The Commission has concluded that a federal candidate's state committee is an entity EFMC'd by the federal candidate. Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4.

1 candidate's own state or local race and those disbursements are allowable under state law.¹⁷ The
2 application of this exemption turns on whether the individual running for federal office is
3 considered a state candidate under state law.¹⁸ Regardless of whether the exemption applies, a
4 candidate's non-federal committee is prohibited from transferring funds or assets to the
5 candidate's federal committee.¹⁹ This prohibition on transferring funds applies broadly and
6 includes payment for services to the federal committee.²⁰

7 **a. There is Reason to Believe Casperson and the State Committee Raised**
8 **and Spent Non-Federal Funds After Casperson Became a Federal**
9 **Candidate**

10 Casperson, a federal candidate as of November 9, 2015, directly EFMC'd the State
11 Committee, which raised funds after he became a federal candidate.²¹ The Act allows a
12 simultaneous federal and state candidate to raise and spend non-federal funds "solely in
13 connection with [their] election for State or local office."²² Casperson, however, was not a
14 simultaneous federal and state candidate. Casperson, as a second-term state senator, was term-
15 limited, and there is no available information to suggest that he was running for a different state

¹⁷ 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.623; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

¹⁸ *See, e.g.*, MUR 6820 (Carter for Congress) FGCR at 14.

¹⁹ 11 C.F.R. § 110.3(d).

²⁰ Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) (Explanation and Justification). *See e.g.*, MUR 6267 (Paton For Senate) (finding that Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (finding that Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); MUR 5426 (Dale Schultz for Congress) (finding that Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

²¹ *See* Advisory Op. 2007-26 (Schock) at 4; *see also* Advisory Op. 2006-38 (Casey State Committee) at 4. Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-01 (McCaskill) at 3; Factual & Legal Analysis at 9, MUR 6601 (Oelrich).

²² 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63; *see* Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

1 office.²³ Term-limited officeholders are not considered candidates for that office under
2 Michigan law.²⁴ Therefore, Casperson was not a state candidate, and the Act's state candidate
3 exception does not apply.

4 Because this exception does not apply, the funds the State Committee solicited and
5 received must comply with the Act's amount limitations and source prohibitions.²⁵ A review of
6 the Michigan campaign finance disclosure reports indicates that the State Committee received
7 \$16,500 from state PACs while Casperson was running for Congress.²⁶ Additionally, the State
8 Committee spent approximately \$22,000 during the same period.²⁷ Of the \$16,500 that the State
9 Committee accepted while Casperson was a federal candidate, at least \$3,000 appear to be from
10 sources not permitted under the Act.²⁸ Therefore, Casperson and the State Committee appear to
11 have accepted at least \$3,000 in impermissible funds after he became a federal candidate.

²³ See *Meet Tom*, State Senator Tom Casperson, <http://www.senatortomcasperson.com/meet-senator-tomcasperson/> (last visited Apr. 2, 2016) (stating that Casperson was elected to the Michigan State Senate in 2010 and again in 2014).

²⁴ See Mich. Comp. Laws Ann. § 169.203(1) ("Candidate" means an individual who ... [h]olds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection"); see also *Candidate Manual*, MICH. BUREAU OF ELECTIONS, <http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheStatementOfOrganizationFormingAndRegisteringACandidateCommittee#cantmlmtd> ("An officeholder who is term-limited is no longer a candidate for that office. . . .").

²⁵ 52 U.S.C. § 30125(e)(1)(B); see also *Factual & Legal Analysis* at 4-5,

²⁶ *Supra* note 8.

²⁷ *Id.* We are unable to make an exact calculation of the State Committee's spending during Casperson's congressional campaign because, as discussed in the Response, the State Committee's disclosures often report the date an expense was paid as opposed to the date the expense was incurred. For instance, a hotel stay that occurred in October may appear on a credit card statement as that paid and reported in late November. Using this method of calculating dates, it appears that the State Committee reported that it spent \$21,202.30 for the time period covered by Casperson's federal campaign.

²⁸ A review of the disclosures for the Michigan Association of Health Plans PAC, DTE Entergy Company PAC, CMS Energy Employees PAC, Michigan Association of CPAs PAC, and Dykema Gossett State PAC shows that each of these entities received contributions in amounts or from sources prohibited by the Act in the years they contributed to the State Committee and while Casperson was running for Congress. The Michigan Association of Health Plans PAC contributed \$500 to the State Committee on November 16, 2015; DTE Entergy Company PAC

1 Thus, we recommend that the Commission find reason to believe that Casperson and the
2 State Committee violated 52 U.S.C. § 30125(e) by raising non-federal funds in amounts and
3 from sources prohibited by the Act while Casperson was a federal candidate.

4 The available information also indicates that while Casperson was a federal candidate,
5 the State Committee spent non-federal funds on state elections by making disbursements to other
6 state committees. The State Committee's disclosure reports reveal that it disbursed \$1,849 to
7 state recipients after Casperson became a federal candidate, which could include nonfederal
8 funds raised by the State Committee while Casperson was a federal candidate.²⁹

9 As discussed above, the State Committee, which Casperson EFMC'd, was prohibited
10 from spending non-federal funds in connection with a federal or non-federal election while
11 Casperson was a federal candidate. Notwithstanding the prohibitions of section 30125(e), the
12 Commission has allowed a state officeholder and federal candidate to donate federally
13 permissible funds in a state account to other state and local political committees if the state
14 committee uses a "reasonable accounting method" to separate permissible from impermissible
15 funds, and it makes the contributions with the permissible funds.³⁰ We do not have information
16 that the State Committee used such an accounting method and thus only used federally
17 permissible funds to make the contributions.

contributed \$500 to the State Committee on November 16, 2015; CMS Energy Employees PAC contributed \$500 to the State Committee on November 16, 2015; Michigan Association of CPAs PAC contributed \$1,000 to the State Committee on December 28, 2015; and Dykema Gossett State PAC contributed \$500 to the State Committee on December 28, 2015.

²⁹ The contributions include \$250 to the Marquette County GOP on April 3, 2016; \$999 to Phil Pavlov for State Senate on April 14, 2016; \$100 to the Republican Women's Federation of Michigan on April 22, 2016; \$300 to the Republican First Congressional Committee on May 6, 2016; and \$200 to the Delta County Republican Party on July 9, 2016. Casperson for State Senate, *Campaign Finance Disclosures*, MICH. SEC'Y STATE, <https://cfrsearch.nictusa.com/documents/416411/details/filing/contributions?schedule=%2A&changes=0>.

³⁰ Advisory Op. 2007-26 (Schock) at 3-5; Advisory Op. 2006-38 (Casey) at 4.

1 Accordingly, we recommend that the Commission find reason to believe that the
2 Casperson and the State Committee violated 52 U.S.C. § 30125(e) by spending nonfederal funds
3 in connection with non-federal elections while Casperson was a federal candidate.

4 **b. There is Reason to Believe that the State Committee Transferred Funds**
5 **to the Federal Committee**
6

7 The Act and Commission regulations prohibit the transfer of funds or assets from a
8 candidate's non-federal campaign committee to his or her federal campaign committee.³¹ Thus,
9 if the State Committee made disbursements for travel on behalf of the Federal Committee, those
10 payments would constitute improper transfers to the Federal Committee.³²

11 The available information suggests that the State Committee may have paid for some of
12 Casperson's federal campaign expenses. According to Facebook posts attached as exhibits to the
13 Complaint, Casperson traveled "over 1,400 miles" and made "23 individual stops" in just the
14 first week after announcing his congressional candidacy.³³ The Federal Committee, though, did
15 not report any travel expenditures for that time period and only reported five hotel expenses
16 during the entire campaign.³⁴ The State Committee, however, reported disbursements that

³¹ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 110.3(d).

³² It appears that the four specific overnight stays discussed in the Complaint were related to Casperson's state office duties. Under Michigan law, elected officials may use their candidate committee funds to pay for "incidental expenses," defined as expenditures that are "an ordinary and necessary expense[s] paid or incurred in carrying out the business of an elective office." See User Guide – Candidate Committee, MICH. BUREAU OF ELECTIONS, <http://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.ExpendituresAndDisbursements#canincexp>. Respondents attached hotel invoices for each night showing that the stays occurred prior to Casperson's announcement of his congressional candidacy, and, based on the information provided in the Response, the events associated with the hotel stays appear reasonably related to Casperson's official state duties. See Advisory Op. 2003-20 (Reyes) (explaining that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of" section 30125); Advisory Op. 2009-26 (Coulson); Advisory Op. 2004-14 (Davis).

³³ Compl. at Ex. G.

³⁴ See 2015 Year-End Report, Casperson for Congress (Jan. 30, 2016); 2016 April Quarterly Report, Casperson for Congress (April 16, 2016); 2016 July Quarterly Report, Casperson for Congress (Oct. 20, 2016). The Federal Committee also reported disbursements for mileage reimbursement in its 2016 July and October Quarterly Reports. No such disbursements were reported, however, for the period between Casperson's announcement of his congressional candidacy through March 2016.

1 appear to be travel or campaign-related in both its 2015 annual report, covering October 21
2 through December 31, 2015, and its 2016 July Quarterly report, covering January 1 through July
3 31, 2016—which included periods when Casperson was a candidate.³⁵ For instance, on March
4 20, 2016, the State Committee reported disbursements for hotel stays at the Franklin Square Inn
5 in Houghton, the Pine Cottage B&B on Mackinac Island, the Room at the Inn in Marquette, and
6 two stays at the Radisson Hotel in Lansing.³⁶ Likewise, on January 24, 2016, the State
7 Committee reported disbursements to a number of restaurants in various towns across
8 Michigan.³⁷ The State Committee continued this type of spending throughout Casperson's
9 congressional campaign, including payments to additional hotels, restaurants, and service
10 stations, many in towns outside Casperson's state senate district.³⁸

11 The Federal Committee's failure to report any travel expenses for periods Casperson was
12 traveling for his congressional campaign, combined with the State Committee's reporting of
13 travel expenses during that same time period, supports a reasonable inference that the State
14 Committee improperly paid for travel expenses related to Casperson's congressional campaign.
15 More information is needed to determine the degree, if any, to which the State Committee
16 financed travel for Casperson's federal campaign. The Commission, however, has stated that it
17 will find reason to believe "in cases where the available evidence in the matter is at least
18 sufficient to warrant conducting an investigation, and where the seriousness of the alleged

³⁵ *Supra* note 8.

³⁶ *Id.*

³⁷ *Id.* The State Committee also reported numerous purchases at flower shops across Michigan, but we are not able to determine at this time whether those purchases were related to campaign events or Casperson's official duties as a state senator.

³⁸ *Id.*

violation warrants" an investigation.³⁹ The available information and the seriousness of the allegations here meet those criteria.

Accordingly, we recommend that the Commission find reason to believe that Respondents violated 52 U.S.C. § 30125(e)(1)(A) in connection with the transfers to cover travel expenses for the federal campaign. We also recommend that the Commission find reason to believe the Federal Committee violated 52 U.S.C. § 30104(b) by failing to report the transfers it received from the State Committee.

IV. PROPOSED INVESTIGATION

To determine the extent that State Committee raised, spent, or transferred non-federal funds after Casperson became a federal candidate, we intend to seek more specific information about the State Committee's receipts and disbursements. Although we plan to use informal investigative methods first, we recommend that the Commission authorize the use of compulsory process in case informal means are unsuccessful.

V. RECOMMENDATIONS

1. Find reason to believe that Tom Casperson violated 52 U.S.C. § 30125(e) by raising and spending impermissible funds;
2. Find reason to believe that Tom Casperson for State Senate violated 52 U.S.C. § 30125(e) by raising and spending impermissible funds and making impermissible transfers;
3. Find reason to believe that Casperson for Congress and Judi Skradski in her official capacity as treasurer violated 52 U.S.C. §§ 30125(e)(1)(A) and 30104(b), by receiving and failing to report impermissible transfers;
4. Authorize the use of compulsory process;
5. Approve the attached Factual and Legal Analysis; and

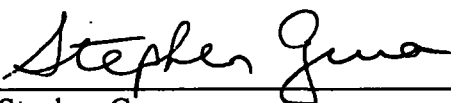
³⁹ Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 71 Fed. Reg. 12545 (Mar. 16, 2007).

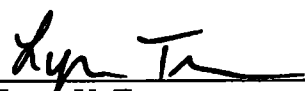
6. Approve the appropriate letters.

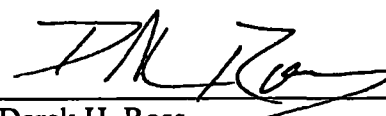
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